



Illinois Department of Transportation

Division of Highways / Bureau of Construction
2300 South Dirksen Parkway, Springfield, Illinois 62764

Subject: **CONSTRUCTION MEMORANDUM NO. 06-76**
Contractor Payments
Articles 109.07 & 109.08
Effective: **April 1, 2006**
Expires: **Indefinite**

This memorandum supersedes Construction Memorandum 03-76 dated November 24, 2003.

One of the most important duties of the Resident is to submit pay estimates for quantities of completed work. The contract between the State and the Contractor differentiates two types of payments to the Contractor: partial payments and final payments. The Resident's work on a project is not complete until the final payment has been made to the Contractor.

Progress Payments

1) Frequency of Progress Pay Estimates

Due to the large dollar value and duration of many contracts, Article 109.07 of the [Standard Specifications for Road and Bridge Construction](#) provides for partial payment to the Contractor for work completed to date. A partial payment, commonly referred to as a progress payment, is initiated by the Resident when he/she fills out and submits a pay estimate form to the Bureau of Construction (or to the Regional Engineer, if administered by a local agency). Article 109.07 specifies that a partial payment will be made to the Contractor at least once per month. However, if the State is the awarding authority, payment will be made only if the value of the payment is \$1,000 or greater.

Depending on the size of the contract, progress pay estimates may be submitted on a more frequent basis. Normally, pay estimates are not submitted more often than twice a month. However, on a multi-million dollar project progress pay estimates may be submitted weekly if sufficient work has been completed to justify that schedule. The Resident may wish to discuss the payment schedule with the prime contractor to ensure that all involved know when payments can be expected.

Each pay estimate must be processed individually by the Central Bureau of Construction. Due to the time required to process each payment, pay estimates should not be submitted more frequently than once per week, and two or more estimates should never be submitted at the same time.

2) Submittal of Progress Pay Estimates

Pay estimate entries may be made using ICORS or on preprinted forms. If ICORS is used, pay estimates should be emailed with a statement indicating the Resident's approval for the contract and pay estimate number, and an original signed copy is to be kept in the Resident's file.

On contracts staffed by state personnel, one copy should be either mailed to Central Construction or emailed to "Pay Estimate Central", one copy each to the district office, prime contractor and a signed copy to be retained in the Resident's file.

On contracts staffed by other than state personnel, two copies including the original should be sent to the State's Resident, one copy each to the prime contractor and contract file. If use of ICORS is approved, pay estimates should be emailed to the State's Resident, prime contractor and one copy retained in the contract file. Once approved, the State's Resident should email the pay estimate to "Pay Estimate Central".

On Local Agency contracts three copies should be mailed to the district contact for approval and one copy retained in the project file. If use of ICORS is approved, pay estimates should be emailed to the district contact. After the estimate is approved in the district, it should be emailed to "Pay Estimate Central" and the contractor.

3) What quantities to submit on a progress pay estimate

On progress pay estimates, the payment quantities for most pay items may be estimated. Estimates can be made for either the quantity of completed work (e.g. volume of earth excavation completed) or the percentage of work completed. The basis for all estimates should be clearly stated in the Resident's documentation. Quantities paid will have to be assigned to the correct fund code and County, Construction, Safety (CCS) Code, as these must be correct by the end of the project. These codes may appear to be random but are not. They are utilized to ensure proper funding is charged for the project from state, federal and local sources.

The Project Procedures Guide provides information for what is acceptable evidence of material inspection. This is a critical item and the Resident must have the evidence in their files, if the evidence is a document (i.e. tickets or an inspection report).

The pay estimate will include the quantities for all pay item work completed in accordance with the contract. It is in the best interest of the State that the Contractor is paid promptly for all work properly performed. All quantities, which are submitted on a pay estimate, must be supported by acceptable documentation. (See item 5)

All work accepted for progress payment must be maintained in acceptable condition until final payment. For example, new drainage structures must be clean at the time

of final inspection. The cost of maintaining newly installed structures is included in the cost of the drainage structures. Ordinarily, it is not necessary to withhold a percentage of the payment for the item for such contingencies. Withholding must be discussed with the Resident's supervisor.

The Resident must use discretion when deciding how to pay for work which is partially completed. The Resident must never pay the full price for partially completed pay item quantities. The following general principles apply:

- a. The value of the partially completed work - The norm is to pay the Contractor for completed units of pay item work. However, if the Contractor is bearing a large cost for partially completed work, typically for lump sum or each items, it may be in the interest of the State to pay a calculated percentage of the pay item cost. Examples of incomplete work include intermediate lifts on bituminous pavement and traffic control (for which the Department has set up a partial payment schedule).
- b. Risk to the State if the work is not eventually completed by the Contractor or if the work is not completed in a timely manner - This may happen, for example, if the Contractor goes out of business before the work is completed. Control of payment for partially completed work is one of the Resident's most effective tools for getting the Contractor to comply with the terms of the contract.
- c. Risk of damage to partially completed work - For example, we do not ordinarily pay for traffic signal control cabinets installed but not yet tested.

4) The effect of change authorizations on pay estimates

When additional work has been added to a contract, whether it is due to a routine change in contract quantities or an addition of new work to the contract, the Contractor needs to be paid for the completed work in a timely manner. In order to accomplish this, a change authorization adding the work should be submitted as soon as a contract addition is known. If the work will be done on a force account basis, an authorization using the estimated costs should be submitted as early as possible, with a revised authorization submitted when final costs are known. There are a number of pay items that have been set up for specific items on change authorizations. A list of these items is included in Construction Memorandum No. 4, Contract Changes – Articles 104.02 and 109.04.

Balancing authorizations should be submitted as work under various pay items are completed, rather than waiting until the end of the project to submit a single balancing authorization for all of the pay items.

5) What NOT to submit on a progress pay estimate

- a. Never pay for work for which you do not have adequate evidence of material inspection. Section 106, Control of Materials, of the Standard Specifications discusses approval of materials incorporated into the work.

- b. Never pay for work that has not been performed. For example, at the end of the fiscal year in June, payments may be temporarily delayed if a new appropriation bill has not been signed by the Governor. On the last pay estimate of the fiscal year, it is illegal to pay for quantities of work that the Contractor intends to perform in the immediate future.
- c. Never "swap" pay items. It is illegal to pay for work covered by one pay item by submitting it on the pay estimate as a different pay item, no matter how similar in description or price the pay items are. If a new type of work is required, then a new pay item (agreed unit price or force account) must be added to the contract by a change authorization.
- d. Never bury non-pay item costs in the contract. For example, if an engineering mistake is made in laying out an item, causing the Contractor to have to perform the work twice, the extra cost should be submitted on an authorization as extra cost due to an engineering error. It is not acceptable to pay for the work twice under the pay item.
- e. Never pay for work which is not complete in accordance with the contract specifications. If it is decided that sub-standard work may remain in place, then the Contractor must submit a credit for that work.
- f. Never pay for work for which you do not have adequate documentation to support the quantity paid. For example, if the Contractor refuses to cooperate in weighing a tonnage item on an approved scale (when required by the contract), then do not pay for the unsupported quantity unless directed to do so by your supervisor.

Paying for work in other than the approved manner may constitute a felony. Residents should be careful to follow the policies and procedures enumerated in this memorandum related to payments.

6) Corrections to Pay Estimates

If errors are discovered in the project quantity documentation, the errors must be corrected as soon as possible. The quantity must also be updated as soon as possible so that the correction can be reflected no later than the next pay estimate. This is especially important if the error being corrected resulted in a large overpayment to the Contractor.

If an error is discovered in the preparation of a pay estimate after submitting the estimate, under most circumstances if the error is discovered immediately the correction can be made over the telephone. In this case, the Resident should contact the District Construction office, which in turn will contact the Central Bureau of Construction, to make the correction. Any corrections made by telephone should be documented in the project diary and the quantity book must be updated to reflect the correction on the next pay estimate.

Material Allowances

Article 109.07 permits the Department, at its discretion to pay the Contractor for costs incurred in supplying non-perishable materials under certain conditions.

The intent of this provision is to pay the Contractor for costs incurred for a particular contract for which payment would not normally be made until the materials are incorporated into the project. It is not the intent of this provision to pay material allowances for stocks of materials which can easily be acquired by the Contractor to meet project scheduling.

A material allowance is different from a payment for partially completed work. In the case of a partially completed pay item, material is consumed as work progresses and the contractor is paid based on work accomplished. For material allowances none of the covered material is yet incorporated into the project pay items.

The following conditions must be met to qualify for a material allowance:

- a. The contractor must submit acceptable evidence of passing material inspection(s).
- b. The material must be non-perishable and is intended for use only on a specific contract.
- c. The material should normally be ready to incorporate into the work. For example, structural steel must be fabricated. Exceptions can be considered in cases of raw steel shortages or to meet tight project schedules. Form [BBS 59](#) shall be used as documentation to substantiate the material allowance for fabricated structural steel. An allowance may be paid for raw steel upon the delivery to the fabricator's yard and stored in an acceptable manner as described below.
- d. All material for which an allowance is to be paid must be in secure storage on the project or at a location acceptable and accessible at any time by the department. The material must be properly protected from damage. If the material becomes damaged or otherwise unacceptable, it shall be removed from the material allowance. If stored off the project site, the location must be such that the resident can maintain reasonable control, either directly or through district staff. The state must be able to "take possession" of the material if the contractor should default on the contract. For this reason, certain materials such as borrow cannot be considered for an allowance due to the problems the department would encounter in taking title under this situation.
- e. The Contractor must present proof of payment within 60 days after receiving payment from the department or the material allowance will be reclaimed. Proof of payment could include:
 - copies of canceled checks (front and back),
 - copies of checks with some form of verification from the financial institution,

- a copy of an invoice from the Supplier marked "Paid by check number _____" which also includes the date, signature and title of the supplier's representative,
- or other acceptable documentation.

A copy of an invoice marked paid is not proper proof of payment. Since the Resident does not know exactly when the Contractor receives their payment, a good rule of thumb is to use 70 days after the pay estimate containing the materials allowances is submitted. Note: Under the [Prompt Pay Act](#), the Contractor has only 15 days from receipt of payment to pay the supplier, the remainder of the time is for the Contractor to obtain canceled check(s) and provide copies of these and other required documentation to the Resident.

- f. There must be a clear benefit to the Department and the Contractor for purchasing the material in advance. For example:
- There is a perceived or potential national or regional shortage of the material;
 - The time required to prepare the material is critical to meeting the contract schedule;
 - The cost of the material is expected to rise before the material is to be incorporated into the work;

Materials that can be readily supplied to the contract and materials which are expected to be incorporated within 60 calendar days should not be included in material allowances.

- g. The inclusion of a material on a material allowance should not place an undue burden on the district with extra inspections or other monitoring requirements.
- h. Because other costs are included with the material cost in the unit price of a pay item, the dollar value of the material allowance should represent only the bare material cost and cost plus transportation shall not exceed 70% of the cost of the corresponding pay item(s). Paying for more than 70% of the pay item cost can be considered in special situations, but under no circumstances shall the value of the material allowance equal the value of the corresponding pay item work.

No allowance will be made for fuels, form lumber, falsework, temporary structures or other work that will not become an integral part of the finished construction.

- i. As the materials are incorporated into the project and paid as a normal pay item, the value of the material allowance(s) will be reduced on the same pay estimate.
- j. The following items are typically acceptable for material allowance payment:

Fabricated structural steel

Complete bridge bearing assemblies

Precast structural units: beams, deck planks,

Fabricated sign trusses

Mast arms

Reinforcing steel for structures

Items impacted by a regional or statewide shortage

Groups of items common except for type or size, such as pipe for culverts or storm sewers

- k. All material allowances must be submitted by the prime contractor. Direct submittals from subcontractors or material suppliers will not be allowed.

Note: This list intentionally does not include aggregates or raw un-fabricated structural steel. The district must satisfy itself that special conditions exist which justify considering such materials for an allowance. Secure storage and accessibility by the department are critical for these and similar materials.

To maintain uniformity in the payment of material allowances, the Bureau of Construction is always available for consultation on special situations involving material allowances. This is strongly encouraged for such issues as perceived material shortages and for non-typical material allowances.

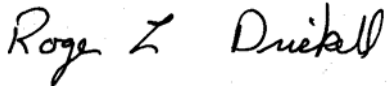
Final Payment

The final payment is based on those completed pay item quantities included in the original contract documents and those quantities that have been added by an approved change order. A representative of the State or local agency must be present for all measurements taken for final payments. Payments shall not be based on Contractor measurements.

Final payment is normally made to the Contractor only after the following conditions have been met:

- 1) All physical work has been satisfactorily completed and accepted;
- 2) all documentation requirements have been satisfactorily completed;
- 3) all materials incorporated into the work have been certified;
- 4) the Contractor has agreed to final quantities;

- 5) any performance bonds required by the contract have been received, including thermoplastic and/or planting bonds if the establishment periods have not been completed;
- 6) DBE payment agreement forms have been submitted to document compliance with DBE goals (if required);
- 7) all appropriate EEO forms and payrolls have been filed; and
- 8) a federal [FHWA 47](#) has been filed (if required).

A handwritten signature in black ink that reads "Roger L. Driskell". The signature is written in a cursive style. To the right of the signature is a vertical red line.

Roger L. Driskell, P.E.
Engineer of Construction